

# Southern Pacific Transportation Company

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GENERAL SOLICITOR

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6050 F  
JUN 13 1984 - 2 15 PM  
June 12, 1984

INTERSTATE COMMERCE COMMISSION

4-165A121

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Twelfth Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: Agreement of Conditional Sale dated as of  
January 1, 1969, among Southern Pacific  
Company, First Pennsylvania Bank, N.A.,  
and General Motors Corporation (Electro-  
Motive Division) -- Declaration of Full  
Payment

Dear Mr. Bayne:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the original and three (3) fully executed counterparts of Declaration of Full Payment dated as of May 15, 1984, between Southern Pacific Transportation Company, as successor by merger to former Southern Pacific Company, and First Pennsylvania Bank, N.A., for the above-entitled Agreement of Conditional Sale and Agreement and Assignment dated as of January 1, 1969, together with voucher in payment of the recording fee.

The following documents have been recorded with the Commission under Section 11303 (former Section 20c) in this matter:

Temporary Agreement of Conditional Sale dated as of January 1, 1969, among Southern Pacific Company, First Pennsylvania Bank, N.A., and General Motors Corporation (Electro-Motive Division), recorded on January 30, 1969, at 11:00 AM, assigned Recordation No. 6050;

Agreement of Conditional Sale dated as of January 1, 1969, recorded on February 5, 1969, at 1:45 PM, assigned Recordation No. 6050-A;

Mr. James H. Bayne  
Page Two  
June 12, 1984

Agreement and Assignment dated as of November 26, 1969, recorded on December 22, 1969, at 11:05 AM, assigned Recordation No. 6050-B;

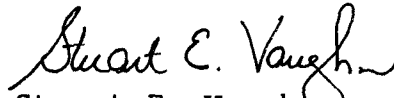
First Supplemental Agreement dated as of February 12, 1982, recorded on March 3, 1982, at 1:25 PM, assigned Recordation No. 6050-C;

Second Supplemental Agreement dated as of November 15, 1983, recorded on December 6, 1983, at 2:40 PM, assigned Recordation No. 6050-D; and

Assignment and Transfer of Certain Road Equipment dated as of November 15, 1983, recorded on January 9, 1984, at 3:00 PM, assigned Recordation No. 6050-E.

When the recording of the Declaration of Full Payment has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative herewith, and return three (3) counterparts to her.

Very truly yours,

  
Stuart E. Vaughn

Enclosures

cc: Mr. D. A. Smith  
(Attn: Mr. L. S. Vollmer)  
Mr. E. L. Johnson  
(Attn: Mr. G. J. Reilly  
Mr. S. Jackovich)

JAN 2, 1969-11 45 AM

INTERSTATE COMMERCE COMMISSION  
MORTGAGE ON TANK CARSRECEIVED  
JAN 2 11 25 AM '69  
I.C.C.  
FEE OPERATION BR

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned mortgagors, ROBERT J. LaFORTUNE and LESTER I. NIENHUIS, each of Tulsa, Oklahoma, hereinafter sometimes referred to as "Mortgagors", have this day borrowed from UTICA SQUARE NATIONAL BANK OF TULSA, Tulsa, Oklahoma, the sum of One Hundred Eighty-Eight Thousand and no/100 Dollars (\$188,000.00), and to evidence their obligation therefor have made, executed and delivered to Utica Square National Bank of Tulsa their promissory note of even date herewith in the principal amount of One Hundred Eighty-Eight Thousand and no/100 Dollars (\$188,000.00), with interest as provided therein, principal and interest being payable in fifty-nine (59) consecutive monthly installments of Two Thousand Six Hundred Eleven and 32/100 Dollars (\$2,611.32) each, with the first installment being due and payable on February 1, 1969, and with a sixtieth (60th) and final installment of unpaid principal, together with interest, being due and payable on January 1, 1974, and bearing interest at the rate of ten percent (10%) per annum from maturity until paid, which note contains a provision for payment of an attorney's fee of Ten and No/100 Dollars (\$10.00) and ten percent (10%) of the principal and interest due thereon in case said note is collected by or through an attorney.

NOW, THEREFORE, in consideration of the premises and to secure the prompt and punctual payment of the note first above described, payable to the order of said bank, as aforesaid, and any note or notes which may hereafter be given by the undersigned payable to the order of said bank prior to the release of this mortgage, and of each and every installment of principal and interest of said note and of any extensions or renewals from time to time of any of said notes, or any installment thereof, Mortgagors do hereby mortgage, assign,

transfer, set over and convey unto the said Utica Square National Bank of Tulsa, its successors and assigns, all and singular the following described property of the undersigned, to-wit:

Ten (10) Jumbo Tank Cars, described as DOT  
(Department of Transportation) Class 112A 340-W,  
33,900 gallons capacity, Serial Numbers MTCX500  
through 504, inclusive, and Serial Numbers  
MTCX600 through 604, inclusive,

together with all fittings and appliances now or hereafter connected therewith, and any replacements of any parts thereof or additions thereto.

TO HAVE AND TO HOLD said property hereby granted, transferred, assigned and mortgaged unto said Utica Square National Bank of Tulsa, its successors and assigns, forever, free and clear of all encumbrances of whatsoever kind or character, and the undersigned Mortgagors do hereby covenant and agree with said Utica Square National Bank of Tulsa, its successors and assigns, as follows:

FIRST: That the undersigned Mortgagors are the owners and legally in possession of each and all of said tank cars, and that there are no encumbrances or liens of any kind or character against any of said property except that certain agreement covering the operating, leasing and handling of said tank cars above described between the undersigned and Mallard Transportation Company dated the 26th day of December, 1968, and that the undersigned have good right and lawful authority to transfer, convey, assign and mortgage the same; that the residences of each of undersigned mortgagors is at Tulsa, Oklahoma;

SECOND: That Mortgagors will not voluntarily create or suffer to be created or to arise any lien or charge upon any of the property described herein and mortgaged hereby having priority to or preference over the lien of these presents upon said mortgaged property, or any part thereof; that Mortgagors will pay all lawful

claims and demands of all persons whomsoever which, if unpaid, might by law be given preference as to this mortgage as a lien or charge upon said mortgaged property, or any part thereof;

THIRD: That Mortgagors will at all times during the time this mortgage is in force and effect keep all said tank cars in first-class condition and repair;

FOURTH: That Mortgagors will forthwith cause to be painted upon the sides of each of said cars, in letters not less than one inch in height, the words "Utica Square National Bank of Tulsa, Mortgagee," so located as to be readily visible and to indicate plainly that said cars are mortgaged to bank, and will, at Mortgagors' own cost, cause said markings to be maintained so long as this mortgage remains in force and effect; and Mortgagors further covenant that the markings upon said cars, above described, indicating the names of the owners and the numbers thereof, shall not be changed without the previous written consent of the bank, and shall be maintained by Mortgagors at their own cost, so that the same shall be plainly visible so long as this mortgage remains in force and effect;

FIFTH: That Mortgagors will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon any part of said mortgaged property, as well as any demurrage or freight charges against the same, so that the priority of this mortgage shall be fully preserved in respect to said property.

SIXTH: That Mortgagors will exercise all reasonable care in the protection and possession of said property so long as said indebtedness remains unpaid, and that the property so mortgaged and pledged by this instrument shall not, during such time, be sold, encumbered, or otherwise disposed of.

SEVENTH: That if default be made in the payment, when due, of any installment of principal or of interest of any note secured hereby, or if Mortgagors should fail to observe or perform any of the covenants or agreements herein contained, or in any other mortgage securing any of the indebtedness secured hereby, or if any proceeding be commenced by or against Mortgagors, or either of them, for the adjudication of Mortgagors, or either of them, as a bankrupt, or for any other relief of Mortgagors, or either of them, as debtors under the Code of Bankruptcy, or if a receiver be appointed for a substantial portion of the property of Mortgagors, or either of them, or if any of the mortgaged property be levied upon or attached and the same is not within five (5) days thereafter released therefrom (all of which shall be deemed "events of default"), then in any such event all sums provided by said note or notes to be paid, may, at the option of the holder thereof, and without notice to Mortgagors, become due and payable, and the bank shall thereupon be entitled to any or all of the following remedies, which shall not be exclusive, but shall be cumulative of any other rights or remedies at law or in equity which the bank may have, to-wit:

- (a) To demand within ten (10) days thereafter to receive from Mortgagors peaceable possession of all said tank cars at some place designated by the bank upon the tracks in Tulsa County, Oklahoma, Mortgagors agreeing that they will, at their own expense, within said ten (10) days, deliver possession of said cars to the bank at the place so designated, and in case of the failure of Mortgagors so to do, possession of said cars may be taken by the bank wherever the same may be found, and at the election of said bank may be removed by said bank to Tulsa County, Oklahoma, at the expense of Mortgagors, and for the purpose of having said cars removed to Tulsa County, Oklahoma, Mortgagors agree that they will, upon demand, deliver to the bank or its assigns, possession of all records they may have, showing or tending to show the location of said cars, and said bank, by any of its officers, in the name of Mortgagors, may give any orders, directions, or instructions to any railroad company or other person, and may sign Mortgagors' names to any transfer,

documents and agreements for the purpose of removing said cars, and may pay the expense of such removal and recover same from the proceeds of the sale of any of the mortgaged cars.

- (b) The bank, its agents, attorneys or representatives, shall have the right and power, with or without exercising any of the rights given in the preceding subsection, to sell at public auction, to the highest bidder, for cash, at one or more sales, all or any part of the mortgaged property, upon giving notice of the time and place thereof, by posting same at five (5) public places in the county in which such sale is to be held, at least ten (10) days prior thereto, one of which places shall be the place where such sale is to be held, or by giving notice at least ten (10) days before such sale, by publication thereof in a newspaper published at least weekly in such county, and of general circulation therein, and by giving such other notice as may be required by law at the place where such sale shall be held. Any such sale may be held at the courthouse door, or any place where sales at public auction are customarily held in any county in any state in which any of the property to be sold may at the time be located; or at the courthouse door in the County of Tulsa, State of Oklahoma. Notice to Mortgagors of any such sale shall be deemed to have been duly given if, not less than ten (10) days before the date of such sale, a copy of such notice shall be delivered to Mortgagors or mailed by ordinary mail addressed to Mortgagors at Tulsa, Oklahoma. It shall not be necessary that the bank, or the person conducting said sale, be in actual or constructive possession of said property at the time of such sale, or that the same be physically present at such sale, nor shall it be necessary, if said sale be held in Tulsa County, Oklahoma, that said property be actually present in the county of the state in which said sale is held; and the title and right of possession to such property shall pass to the purchaser at such sale as completely as if said property had been actually present and delivered at such sale, and Mortgagors covenant and agree to deliver all of such property to the purchaser within a reasonable time thereafter, and for that purpose to execute and deliver all proper instructions, orders, or documents to any railroad company, or other person, and such other and further assurances as may be proper or required; and such purchaser shall be entitled to exercise all the rights and privileges herein given to the bank in the preceding subsection (a) hereof for the recovery of possession of any of said cars. At any such sale, the bank, if the highest bidder therefor, may become the purchaser of any such property. The proceeds of any such sale shall be applied:

**First:** To the payment of all costs and expenses of such sale, including any expenses which may have been advanced or incurred by the bank in recovering possession or custody of, or in causing the return of said property to the place of sale, if any, together with an attorney's fee of Ten Dollars (\$10) and ten percent (10%) of the amount realized at such sale, as a fee for the foreclosure hereof.

**Second:** To the payment of the indebtedness secured by this mortgage, with interest and attorney's fees.

**Third:** Any excess shall be paid to Mortgagors or their assigns.

- (c) The bank may proceed by action or actions in any court or courts of competent jurisdiction to foreclose this mortgage.

The provisions of this mortgage shall be binding upon the heirs, executors, administrators, representatives, successors and assigns of Mortgagors, and each of them, and shall inure to the benefit of the successors and assigns of the bank.

IN WITNESS WHEREOF, the undersigned, ROBERT J. LaFORTUNE and LESTER I. NIENHUIS, have executed this instrument and delivered same this 27<sup>th</sup> day of December, 1968.

Robert J. LaFortune  
ROBERT J. LaFORTUNE

Lester I. Nienhuis  
LESTER I. NIENHUIS



STATE OF OKLAHOMA )  
 ) SS.  
COUNTY OF TULSA )

Before me, the undersigned, a Notary Public in and for said County and State, on this 27th day of December, 1968, personally appeared ROBERT J. LaFORTUNE, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

La Wanda Ross Wyatt  
Notary Public

My Commission Expires:

12-28-71

STATE OF OKLAHOMA )  
 ) SS.  
COUNTY OF TULSA )

Before me, the undersigned, a Notary Public in and for said County and State, on this 27th day of December, 1968, personally appeared LESTER I. NIENHUIS, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

La Wanda Ross Wyatt  
Notary Public

My Commission Expires:

12-28-71

**(CONTRACT RIGHTS)**

## SECURITY AGREEMENT

THIS AGREEMENT made on December 27, 1968, between the  
(Date)

UTICA SQUARE NATIONAL BANK OF TULSA (herein called "Bank") and ~~Robert J. LaFortune and~~  
~~Lester I. Mienhuin,~~ (herein called "Borrower").

WHEREAS, Borrower desires to borrow from Bank the sum of One Hundred Eighty-Eight Thousand.  
and No/100ths \* \* \* \* \* Dollars

~~(\$ 188,000.00)~~ to be evidenced by Borrower's promissory note(s) payable to the order of Bank and Borrower desires to secure the payment of said indebtedness as evidenced by said note(s) and all other indebtedness, liabilities, and obligations of Borrower to Bank now or in the future made hereunder, now existing or hereafter incurred, matured or unmatured, direct or contingent, including any extensions and renewals or changes in form thereof whether acquired by Bank in the usual course of business dealings or otherwise; and in order to effect the security interest herein contemplated, the parties hereto intending to be legally bound agree as follows:

1. Borrower warrants that the office where it keeps the records concerning all of its accounts and contract rights is that appearing after Borrower's signature hereto, unless a different address has been specified in the following space:

Borrower will immediately notify Bank in writing of any discontinuance or any change in location of the place of business where the records concerning its accounts and contract rights are kept.

2. Bank will, from time to time hereafter, lend Borrower on the security of contract rights under the contract(s) described herein together with any other contract(s) added hereto by addenda, such amounts as Bank may determine and on such terms as Bank may specify. All such contracts hereinafter added hereto shall be subject to all of the provisions and agreements herein contained. All such loans shall be evidenced by notes in form satisfactory to Bank, bearing interest at the rate agreed upon from time to time by the parties and being payable as therein provided.
3. As security for the payment of the loan first described above together with all other loans now or in the future made hereunder and all indebtedness of Borrower to Bank now existing or hereafter incurred, matured or unmatured, direct or contingent, including any extensions and renewals thereof, Borrower hereby assigns and grants to Bank and agrees that Bank shall have a security interest in all moneys and claims for moneys due and to become due to Borrower under the following described contract(s):

All funds due and to become due under that certain Agreement dated the 26th day of December, 1968, between Borrowers and Mallard Transportation Company, a corporation, covering the operating, leasing and handling of ten (10) 33,900 gallon DOT Class 112A 340-W Jumbo Tank Cars, Serial Numbers MTCX500 through 504, inclusive, and Serial Numbers MTCX600 through 604, inclusive, and related and associated equipment,

and, in all moneys and claims for moneys due and to become due to Borrower under the particular contract(s) which have heretofore or are hereafter assigned by Borrower to Bank together with all cash and non-cash proceeds arising from Borrower's performance of all contracts now, heretofore or hereafter assigned and all proceeds of accounts receivable arising therefrom.

4. Bank shall have the right to notify the other party obligated on said contract(s) to make all payments thereunder direct to Bank, and Bank may take control of all proceeds arising from said contract(s) which rights Bank may exercise at any time whether or not the Borrower is then in default hereunder or was theretofore making collections thereon. The Bank's costs of collection and enforcement, including attorney's fees and out-of-pocket expenses, shall be borne solely by Borrower. All payments received by Bank pursuant to said assignments shall be applied when the funds are available against the principal and/or interest of any loans made hereunder and/or on Borrower's other indebtedness secured hereby, the order and method of such application to be in the discretion of Bank. Any portions of said payments which Bank elects not to so apply shall be paid over to Borrower.
5. Borrower will at all times keep accurate and complete records of Borrower's performance under said contract(s), and Bank, or any of its agents, shall have the right to call at Borrower's place or places of business at intervals to be determined by Bank, and without hindrance or delay, to inspect, audit, check and make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to said contracts or to any other transactions between the parties hereto.
6. So long as any liability to Bank is outstanding, Borrower will not without the prior written consent of Bank borrow from anyone except Bank or pledge, or grant any security interest in, any account or contract right or any of its inventory, equipment, or other property to anyone except Bank, or permit any lien or encumbrance to attach to any of the foregoing, or any levy to be made thereon, or any financing statement (except Bank's statement) to be on file with respect thereto.
7. Unless Bank notifies Borrower in writing that it dispenses with any one or more of the following requirements, Borrower will:
  - (A) Inform Bank immediately of delay in performance, or claims made, in regard to any contract right assigned to Bank;
  - (B) Make no change in any account arising out of a contract right assigned to Bank, and no change in the terms of any such contract;
  - (C) Furnish to Bank all information received by Borrower affecting the financial standing of any party to a contract, the moneys due and to become due under which have been assigned to Bank;
  - (D) Pay Bank the amount loaned against any contract right assigned to Bank where the contract is cancelled or terminated;
  - (E) Execute any instruments and take any steps required by Bank in order that notice of the assignment of all moneys due and to become due under any contract with the United States or any department, agency or instrumentality thereof, which is assigned to Bank, shall be given to the Government as required by the Federal Assignment of Claims Act.

Any permission granted to Borrower to omit any of the requirements of this Paragraph 7 shall not be deemed to be a continuing waiver of any of the requirements of this paragraph unless so specified in writing by Bank, and any permission granted hereunder may be revoked by Bank at any time.

8. Except as otherwise provided in this assignment, Borrower warrants in connection with each contract right covered by this Agreement that:
- (A) It arises under an existing binding written contract between Borrower and the other party thereto, is not evidenced by an instrument or chattel paper, and represents a bona fide transaction;
  - (B) The title of Borrower to the contract right is absolute;
  - (C) The contract right has not been transferred to any other person, and no person, except Borrower, has any claim thereto;
  - (D) No partial payment has been made by anyone;
  - (E) No set-off or counterclaim to any moneys due under such contract exists as of the date of the assignment, and no agreement has been made with any person under which any deduction or discount may be claimed, except as set forth in the contract.
9. In the event any of the indebtedness hereby secured or any part thereof or any interest thereon is not paid when due or in the event any of the warranties or agreements herein set forth are not true or are broken, or in the event a receiver is appointed over any substantial part of Borrower's property, or in the event proceedings shall be commenced by or against Borrower under the Bankruptcy Act, as amended, or in the event Borrower makes an assignment for the benefit of creditors, then, in such event, Bank may, at its option without notice or demand, declare all of the indebtedness hereby secured immediately due and payable and Bank may in addition to any other rights and remedies which it may have immediately and without demand exercise any and all the rights and remedies granted to a secured party upon default under the Uniform Commercial Code. Bank shall not be liable for failure to collect any accounts or to enforce any contract right or for any act or omission on the part of Bank, its officers, agents and employees, except willful misconduct.
10. Borrower does hereby irrevocably authorize and empower Bank, without notice to Borrower, either in its name or in the name of Borrower, for the use and benefit of Bank, to ask, demand, collect, compound and prosecute any suit or proceeding for any or all sums hereby assigned, and does further authorize and empower Bank to endorse in the name of the Borrower any checks, drafts or other orders payable to Borrower, for application to the indebtedness secured hereby; and this authority shall be irrevocable until all of the indebtedness secured hereby has been fully paid and discharged.
11. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other remedy or remedies including those of any note or other evidence of indebtedness held by Bank, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity.
12. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of Borrower and shall inure to the benefit of Bank, its successors and assigns.

UTICA SQUARE NATIONAL BANK OF TULSA

By

1702 East 21st Street  
Tulsa, Oklahoma

Robert J. LaFortune  
Robert J. LaFortune

Lester I. Nienhuis  
Lester I. Nienhuis  
(Borrower)

By

Address where contracts and accounts records kept

1801 Philtower Building

(Number and Street)

Tulsa, Oklahoma

(City, County and State)

Notification of the within assignment is hereby received, and the undersigned agrees to pay if, as and when due said amounts to the Utica Square National Bank of Tulsa.

STATE OF OKLAHOMA )  
COUNTY OF TULSA ) SS.

Before me, the undersigned, a Notary Public, in and for said County and State, on this 27th day of December, 1968, personally appeared ROBERT J. LaFORTUNE and LESTER I. NIENHUIS, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

My Commission Expires:

12-28-71

La Wanda Ross Wyatt  
Notary Public

A G R E E M E N T

RECEIVED  
JAN 2 11 26 AM '69  
I.C.C.  
FEE OPERATION BUREAU

This Agreement is made and entered into at Tulsa, Oklahoma this 26th day of December, 1968, by and between Mallard Transportation Company, a corporation, (hereinafter called Mallard) and the parties signatory to this agreement, (hereinafter called Owners).

Robert J. LaFortune and Lester I. Nienhuis each are co-owners of an undivided 50 percent interest of ten (10) railroad tank cars, DOT Class 112 A 340-W each having a capacity of approximately 33,900 gallons, carrying reporting marks MTCX 500, 501, 502, 503, 504, 600, 601, 602, 603, 604, desire to enter into this Agreement for the purpose of securing the services of Mallard as the exclusive manager and operator of such tank cars during the term of this agreement.

Mallard, as owner and operator of other Railroad tank cars of various capacities and sizes desires to assume the operation and management of the tank cars immediately described above on the terms and conditions herein set forth.

Now, therefore, in consideration of the mutual promises herein exchanged, the payments made and to be made, and the duties and the obligations undertaken, all parties hereto agree as follows:

1. Contemporaneously with the execution of this agreement Mallard agrees to assume the exclusive control and management of the ten (10) tank cars

Continued - - -

described above and to use its best efforts to keep all such cars under lease or in operation during the term of this agreement. In the event successful leases are negotiated covering all or a portion of said cars, Mallard agrees to fulfill all lease requirements with the various lessees; Mallard agrees to operate, maintain, service, release, as necessary, repair and in general do all such things as necessary to continue such cars in operational service during the term of this agreement. In the event leases are not available, Mallard agrees to use its best efforts to operate and maintain such cars in operational service on a mileage or per diem income basis.

2. Mallard likewise agrees to maintain sufficient insurance to hold Owners harmless from any claims for injury or damage, including claims for workmen's compensation, of any nature whatsoever. Mallard further agrees to pay on behalf of Owner all necessary licenses, fees, taxes, (except attributable income taxes) or costs of maintenance, repair and operation.
3. Mallard agrees to make all necessary reports to lessees, any Railroad or Governmental agencies.
4. Mallard agrees on behalf of Owners to receive all rentals or fees earned by such cars, to deduct all

costs of maintenance, repair or operation attributable to such cars and to remit the balance, if any, attributable to each respective Owner, at the end of each calendar month.

5. Mallard agrees to furnish Owners monthly itemized statements disclosing earned revenues, incurred expenses and current balances pertaining to each respective Owner's account.
6. In the event the costs of operation or repair exceed the earned revenue, Mallard agrees to bill each Owner for his proportional share. Each Owner agrees to pay any statement for such expenses within fifteen (15) days from the day of billing and further agrees that if any such billing is not paid, Mallard may withhold future revenues plus one percent (1%) per month on the unpaid balance until all arrearages are recouped.
7. Mallard agrees that Owners may have access to its books and records pertaining to the operation of said tank cars at any time during normal business hours and upon Owners request.
8. Both parties agree that Mallard shall conduct all affairs as an independent contractor free and immune from any control by Owners of any nature whatsoever and that this management agreement shall be an exclusive management agreement with Mallard during the term of the agreement.

9. Both parties agree that as the sole compensation to Mallard for the services to be performed, Mallard may retain ten percent (10%) of the gross receipts attributable to such tank cars, payable monthly, but adjusted at the end of each calendar year to ten percent (10%) of the gross receipts earned during such calendar year.
10. Both parties agree that Mallard may operate all cars held under the terms of this agreement under the business name of Mallard Transportation Company and may assign to such cars the reporting mark MTCX. Mallard agrees that all cars operated by it under the terms of this agreement will be so identified.
11. The term of this agreement is ten years from the date first written above. Mallard shall have the sole and exclusive option to extend this agreement on the terms and conditions set forth above, for three successive additional five year terms, the option to extend to be exercised by Mallard giving Owners written notice of its intention so to do six months prior to the end of each respective period.
12. In the event Mallard extends the term of the initial period into the first five year extension period Mallard shall have an additional option,

exercisable at any time during such extended five year term, to acquire from each respective Owner ten percent (10%) of Owner's interest in the ten (10) cars described above so that Mallard may purchase a total of an undivided 10% interest in and to such ten (10) cars for an agreed purchase price to be equal to the then undepreciated cost of such cars on the books of Owners. Mallard shall exercise this option by giving each respective Owner written notice of its exercise and by tendering to such Owner concurrently with its notice its check in the full amount due under the terms of this provision.

Regardless of the method or rate of depreciation actually used by each respective Owner, Mallard's option price shall be equal to that portion of Owner's cost which, on the date of exercise, would not have been recovered had each Owner depreciated his portion of such cars at the maximum accelerated rate permissible under the provisions of the Internal Revenue Code or Regulations, in effect during the term of this agreement prior to the date on which Mallard actually exercises its option, if done.



13. All parties hereto specifically agree that this operating agreement does not constitute a partnership, either general or limited, between either Mallard or Owners, or any of them, or between Owners themselves, but is to be interpreted as an operating agreement between all the parties hereto.

DATED AND DONE at Tulsa, Oklahoma, the date first above written.

ATTEST:

R. Robert Huff  
Secretary

MALLARD TRANSPORTATION COMPANY

BY

Peter C. Walter

WITNESS:

Margaret E. Thomas

Evelyn R. Minkus

OWNERS

Robert J. La Fortune

John D. Williams